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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL WILLIAM AHRENS,

Defendant and Appellant.

A144374

(Sonoma County
Super. Ct. No. SCR-632432)

Defendant Paul Ahrens appeals from the trial court's denial of his petition to recall his sentence pursuant to Penal Code section 1170.18,¹ a recently enacted provision of Proposition 47, and to reduce his prior conviction for receiving or concealing a stolen vehicle (§ 496d) from a felony to a misdemeanor. Ahrens's appointed appellate counsel filed a brief asking this court to conduct an independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel also informed Ahrens of his right to file a supplemental brief, but Ahrens did not file one. We have reviewed the record, find no issues that require briefing, and therefore affirm.

I. BACKGROUND

On April 4, 2013, the Sonoma County District Attorney's Office filed a felony complaint charging Ahrens with receiving a 2000 Pontiac Grand Am, knowing it was stolen (§ 496d, subd. (a)). The complaint further alleged, pursuant to section 666.5, that Ahrens had previously been convicted of a violation of Vehicle Code section 10851,

¹ All statutory references are to the Penal Code unless otherwise stated.

subdivision (a) (unauthorized driving or taking of a vehicle) on April 29, 1999, and of section 496d, subdivision (a) on March 26, 2007.

On April 18, 2013, Ahrens, pursuant to a negotiated plea agreement, entered a plea of nolo contendere to the charge of receiving a stolen vehicle under section 496d, subdivision (a). Ahrens also admitted to the prior conviction under Vehicle Code section 10851, subdivision (a). The court imposed a three-year jail term, with the last 18 months to be served on mandatory supervision.

On December 23, 2014, Ahrens, while still serving the sentence imposed by the court in April 2013, filed a petition pursuant to section 1170.18, asking the court to recall his felony sentence and to resentence him to a misdemeanor. The district attorney's office opposed Ahrens's petition. In a response filed on January 22, 2015, the district attorney's office stated its position that a conviction under section 496d "is not an eligible offense" for resentencing under section 1170.18. The prosecutor's office also stated that the "value [of the stolen vehicle] was over \$950, regardless" (i.e., the value of the vehicle received by Ahrens exceeded the statutory threshold for relief under Proposition 47).

The court heard Ahrens's petition on February 18, 2015. At the hearing, Ahrens's counsel stipulated to the foundation for records relating to the donation of the vehicle to charity. According to statements at the hearing by the court and counsel, those records showed that the stolen vehicle, after being returned, was sold for, or valued at, \$1,400.² The court noted that an invoice showed the vehicle "was valued at about \$1,400, because that's what the claimed sales price was." Ahrens's counsel stated: "It appears that the vehicle was sold subsequent to being returned for \$1,400." The prosecutor confirmed this understanding.

As to whether a conviction under section 496d is eligible for resentencing, Ahrens's counsel acknowledged that section 496d is not listed in section 1170.18 (the resentencing provision of Proposition 47). Counsel argued, however, that Proposition 47

² The documents that were the subject of the parties' stipulation and discussion at the hearing are not in the record on appeal.

should be “construed liberally and broadly” to include section 496d and to allow resentencing for offenses involving “possession of stolen property under \$950, including vehicles[.]” Ahrens’s counsel acknowledged “a problem we have with the other hurdle,” i.e., the limitation of relief to cases in which the value of the property is less than \$950.

The court denied Ahrens’s petition. The court concluded that “even a liberal reading would not go so far as to add [section 496d]” to the set of offenses eligible for resentencing under Proposition 47. The court also found, “based on the paperwork, that the value of the car is somewhere between \$1,400 and \$2,000[.]” While acknowledging it did not know “what the replacement cost would be,” the court found “at one point it was at least sold for \$1,400 after undergoing some repairs, total \$2,000.”

II. DISCUSSION

Preliminarily, we note that, when a defendant appeals a postconviction order (such as an order denying a petition for resentencing under Proposition 47), there is a question as to whether he may take advantage of the procedural protections afforded by *Wende* and seek independent review of the matter in this court. (See *People v. Serrano* (2012) 211 Cal.App.4th 496, 503 [defendant is entitled to *Wende* review in “a first appeal of right” from a criminal conviction but is not entitled to such review in subsequent appeals].) Assuming, without deciding, that Ahrens is entitled to *Wende* review, we conclude, after reviewing the record, that there are no meritorious issues to be argued.

Upon receiving Ahrens’s petition for resentencing under section 1170.18, the court considered the petition and the parties’ arguments as to whether Ahrens satisfied the criteria for resentencing. (See § 1170.18, subds. (a)-(b).) We find no arguable basis for challenging the court’s conclusion that Ahrens was not entitled to relief. Section 1170.18 provides in part:

“(a) A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (‘this act’) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350,

11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.

“(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner’s felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, those sections have been amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.”

Subdivisions (a) and (b) of section 1170.18 require that, in order to qualify for relief under these provisions, the petitioner must have been convicted of a felony which now constitutes a misdemeanor under one of the specifically referenced statutes, each of which was either amended or enacted pursuant to Proposition 47. Those newly designated misdemeanors include possession of a controlled substance (Health & Saf. Code, §§ 11350, 11377), possession of marijuana (Health & Saf. Code, § 11357), shoplifting (§ 459.5), forgery (§ 473), illicit check writing (§ 476a), petty theft (§ 490.2), receiving stolen property valued at under \$950 (§ 496), and petty theft with a prior (§ 666).

Section 496d (the statute under which Ahrens was convicted) is not listed in section 1170.18. Ahrens’s trial counsel argued, however, that because a person convicted under section 496 for receiving stolen property worth less than \$950 may be eligible for relief under section 1170.18, that relief should also be available to a person convicted under section 496d for receiving a stolen vehicle worth less than \$950. We will assume this contention might present an arguable appellate issue in an appropriate case.³ (See *People v. Orozco* (Jan. 21, 2016, D067313) __ Cal.App.4th __ [2016 WL 242802, *1,

³ We note our Supreme Court has granted review in a case that involves the question whether a defendant convicted under section 496d may be eligible for relief under section 1170.18. (*People v. Garness*, review granted Jan. 27, 2016, S231031.)

*4—*5].) But no such issue is presented here. The trial court expressly found the value of the stolen car received by Ahrens exceeded \$950, and we find no basis for an appellate challenge to that finding. Accordingly, we find no arguable issue as to whether Ahrens’s section 496d conviction qualified for resentencing under Proposition 47.

III. DISPOSITION

The denial of Ahrens’s petition to recall his sentence and for resentencing under section 1170.18 is affirmed.

Streeter, J.

We concur:

Reardon, Acting P.J.

Rivera, J.